all joint tenancies created without valuable and adequate consideration as transfers intended to take effect in possession or enjoyment at or after death. This was done in California by the amendment of 1915.[15]

W. A. S.

LANDLORD AND TENANT: SURRENDER BY OPERATION OF LAW.—It has long since been decided in California that where a tenant vacates premises during his term, a surrender by operation of law takes place if the landlord forthwith re-lets to a third person for a longer period than the residue of the term, and this whether notice has been given to the tenant that he would still be held, or not.[1] The same is now decided to be true where the re-letting is for a period shorter than the residue of the term.[2] A recent comment in this Review pointed out the consistency of the latter position with that previously indicated as the probable rule in California.[3] In both situations possession had been taken by the lessee.

But suppose that after a lease is validly executed, but before possession is taken by the lessee, the latter declares his intention to rescind, and the lessor, without the lessee ever having taken possession, re-lets to a third person? The problem was raised for the first time in California by *Bernard v. Renard*.[4] It was decided that no surrender took place, the court emphasizing the absence of possession by the lessee, and declaring that the temporary re-letting to the third persons was no more an invasion of lessee's rights than was the occupancy of the lessor herself. The decision runs counter to both reason and authority.

The earliest and now accepted definition of surrender emphasizes the tenancy or interest and not the possession.[5] The emphasis is properly placed. Thus a surrender is regarded as resulting from the recognition by the landlord, with the tenant's consent, express or implied, of a subtenant in possession as his own immediate tenant.[6] So likewise, where a tenant during his term

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[15] Supra, n. 8.

[1] Welcome v. Hess (1891), 90 Cal. 507, 27 Pac. 369.

[2] Triest & Co. v. Goldstone (1916), 52 Cal. Dec. 232. See also 21 Cal. App. Dec. 257.

[3] 4 California Law Review, 158.

[4] (July 17, 1916), 23 Cal. App. Dec. 105.

[5] Surrender is defined by Lord Coke as a yielding up of an estate for life or years to him that hath an immediate estate in reversion or remainder, wherein the estate for life or years may drown by mutual agreement between them. Co. Litt. 337b.

[6] Stimmel v. Waters (1867), 65 Ky. 282; Snyder v. Parker (1898), 75 Mo. App. 529; Bailey v. Delaplaine (1847), 3 N. Y. Super. Ct. 5; Amory v. Kannoffsky (1875), 117 Mass. 351, 19 Am. Rep. 416; Thomas v. Cook (1818), 2 Barn. & Ald. 119. The explanation of the latter case in Wallis v. Stands (1893), 2 Ch. 75, while possibly true, does not eliminate the elements of estoppel for which the case is important.

takes a new lease from his landlord.[7] A change of possession is but one fact tending to raise an estoppel to deny the surrender of the tenancy.

Since to-day the tenancy or estate is created forthwith upon the execution of the lease, rather than by the entry of the lessee as at common law, and since surrender properly concerns the estate and not the possession, it would seem that a re-letting to a third person would estop the landlord from denying an acceptance of a surrender of that tenancy, whether entry had been made or not. A lessee who finds a third person in possession by virtue of an agreement with the landlord, must necessarily regard the landlord's acts as inconsistent with any rights he himself may have. It is difficult to conceive of two independent tenants of the same premises at the same time. A New York case has held that in a situation like that in the principal case, a surrender took place.[8]

W. A. S.

TRUSTS: NECESSITY OF SEGREGATION OF TRUST FUND.—The decision of the California District Court of Appeal in *Molera v. Cooper*,[1] commented on in the January number of the current volume of this Review[2] has been set aside and a decision has been rendered by the Supreme Court,[3] which accords with the criticism of the case there made.

O. K. M.

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[7] Lyon v. Reed (1844), 13 M. & W. 284; Jungerman v. Bovee (1861), 19 Cal. 354.

[8] McInerney v. Brown (1910), 141 App. Div. 36, 125 N. Y. Supp. 639.

[1] (Sept. 27, 1915) 21 Cal. App. Dec. 363.

[2] 4 California Law Review, 167.

[3] (Aug. 4, 1916) 52 Cal. Dec. 240.